

Federal Court



Cour fédérale

**Date: 20220621**

**Docket: T-1361-21**

**Citation: 2022 FC 932**

**Ottawa, Ontario, June 21, 2022**

**PRESENT: The Honourable Justice Fuhrer**

**BETWEEN:**

**WILLIAM PATRICK BAZAN**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA AND  
THE HONOURABLE MR. JUSTICE  
THEODOR E. BOCK**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] William Patrick Bazan brings this application for judicial review of the Canadian Judicial Council's early screening determination by its interim Executive Director that the complaint against Justice Bock of the Court of Queen's Bench of Manitoba does not warrant consideration by the Council because it does not raise any issue of conduct.

[2] Mr. Bazan's complaint to the Canadian Judicial Council [Council] arises from legal proceedings in the Court of Queen's Bench of Manitoba, *Bazan v Bazan et al*, 2021 MBQB 117 [Bazan], over which Justice Bock presided. Justice Bock also was the case management judge. The *Bazan* decision has been appealed. The parties to this judicial review application disagree whether the appeal has been resolved finally.

[3] Mr. Bazan complains to the Council about the manner in which the judge oversaw the *Bazan* matter, including his demeanour toward the parties; in other words, Mr. Bazan states that the proceedings were conducted in a procedurally unfair manner and that the judge was biased.

[4] In challenging the Council's early screening decision rejecting his complaint [Decision], the Applicant asserts that the Council did not look at the material and arguments submitted because there was no reference to the matters raised. Further, the Applicant understands that the matters raised in the complaint were to be reviewed by a judge from another province. He asks the Council to review the matter and make a decision on the material submitted.

[5] In response, the Attorney General of Canada says that the Council is not a court and does not have authority to review the merits of a judge's decision; and further, the appropriate forum to hear the Applicant's complaints against Justice Bock is the applicable appeal court.

[6] Having considered the parties' written material, their oral submissions, and applicable law, both statutory and case law, I find this matter raises the following issues for the Court's determination: (a) is the exercise of authority by the interim Executive Director lawful; did he act

within his authority in pre-screening and rejecting the complaint; and (b) is the Decision reasonable? Because nothing turns, in my view, on whether the Executive Director at the time was interim, I refer simply to the Executive Director for the balance of these reasons.

[7] I conclude that the Executive Director acted within the authority lawfully delegated to him, and that, in the circumstances, the decision is not unreasonable. For the more detailed reasons below, I therefore dismiss this judicial review application.

[8] I note that while Justice Bock was represented at the hearing before the Court, he did not make substantive submissions. Accordingly, when I refer in these reasons to the Respondent, I mean the Attorney General of Canada. I further note that Mr. Bazan represented himself, with the assistance of his sister-in-law, Ms. Lori Bazan who was present, because of recent health challenges Mr. Bazan faces. Neither of the other parties objected this assistance and the Court permitted it in the circumstances.

## II. Standard of Review

[9] Contrary to Mr. Bazan's position that correctness is the applicable standard of review, I find that the presumptive standard of reasonableness applies to this matter: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25. Further, I am not persuaded that any of the circumstances in which the presumption of reasonableness can be rebutted has been established here: *Vavilov*, at para 17. As the Supreme Court guides, jurisdictional questions of the type in issue here (i.e. whether the Executive Director exceeded his authority) no longer attract correctness review: *Vavilov*, at paras 65-66.

[10] Mr. Bazan asserts that the constitutional rights of various family members were abrogated or disregarded in the Manitoba proceedings. The focus of this judicial review, however, is the Council's Decision, and whether it exhibits the requisite degree of justification, transparency and intelligibility in the reasoning to avoid being set aside: *Turner-Lienaux v Canada (Attorney General)*, 2021 FC 1483 [*Turner-Lienaux*] at para 12; *Bernard v Canada (Attorney General)*, 2021 FC 1487 at para 11. Further, it is not the role of a reviewing court to reassess and reweigh the evidence presented to the decision maker: *Vavilov*, at para 125.

[11] Finally, it is the Applicant's burden to persuade this Court that the Decision is unreasonable: *Vavilov*, at para 100. For the reasons below, I am not satisfied that the Applicant here has met his burden.

### III. Analysis

#### A. *Council's Executive Director Acted Within His Authority*

[12] Contrary to the Applicant's assertion, I am not persuaded that the Executive Director did not have the authority to dismiss the Applicant's complaint at the early screening stage of the Council's complaints review process, or that the Applicant was entitled as of right to have the complaint considered by a judge.

[13] The Council was created by statute and derives its mandate from Part II of the *Judges Act*, RSC 1985, c J-1 [*Act*]. See Annex "A" for relevant legislative provisions.

[14] The objects and powers of the Council are described in subsections 60(1)-(2). In addition, further to subsection 63(2) of the *Act*, the Council “may investigate any complaint or allegation made in respect of a judge of a superior court” [emphasis added]. In other words, it is in the Council’s discretion to determine whether to investigate a complaint: *Best v Canada (Attorney General)*, 2017 FC 1145 [*Best*] at para 21.

[15] The Council has adopted procedures regarding investigations and inquiries, including the *Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges*, July 29, 2015 [*2015 Review Procedures*]. The *Canadian Judicial Council Inquiries and Investigations By-laws*, SOR/2015-203, together with the *2015 Review Procedures*, set out a multi-stage process. At the first stage, the Council’s Executive Director reviews the complaint and decides whether the matter warrants consideration, with reference to the early screening criteria: sections 4 and 5 of the *2015 Review Procedures*. In particular, according to paragraph 5(b), complaints that do not involve conduct do not warrant consideration by the Council.

[16] The *2015 Review Procedures* are to be contrasted with the Council’s *Procedures for Dealing with Complaints made to the Canadian Judicial Council about Federally Appointed Judges* that came into effect on October 14, 2010 [*2010 Review Procedures*]. This Court considered the *2010 Review Procedures* in *Girouard v Canada (Attorney General)*, 2019 FC 1282 at para 121, where Justice Rouleau observed that “[a]lthough the Executive Director does carry out administrative duties at various stages of the complaints process, he or she plays no decision-making role in the inquiry at any of those stages.”

[17] The *2015 Review Procedures*, however, give the Executive Director an enhanced role at the early screening stage. Although the *2015 Review Procedures* are not contained in a statute or regulation, nonetheless they apply to complaints made after their adoption. The reason why is rooted in the legislative discretion bestowed on the Council (“may”) to investigate complaints.

[18] As this Court has noted, the Council is a federal tribunal and when superior court judges act as members of the Council, they in effect serve as members of an administrative tribunal: *Best*, at para 21, citing *Singh v Canada (Attorney General)*, 2015 FC 93 [*Singh*] at para 39, 474 FTR 164. Accordingly, as a general rule, the Council controls its own procedures: *Prasad v Canada (Minister of Employment and Immigration)*, 1989 CanLII 131 (SCC), [1989] 1 SCR 560 at pp 568-569.

[19] I also find that the delegation of the early screening function to the Council’s Executive Director is lawful. Section 62 and subsection 63(2) of the *Act* specifically permit the Council to enlist the services of others whom it considers necessary to carry out its duties and functions, including in respect of complaints or allegations made against a superior court judge: *Duhamel v Canada (Attorney General)*, 2021 FC 1255 at paras 28-29, citing *Best*, at paras 22-23, 26. As former Justice Boswell observed in *Best* at para 23, the early screening process is in the nature of a discretionary administrative winnowing function, the delegation of which generally is supported by jurisprudence.

[20] I thus conclude that the Executive Director did not act outside his authority but rather, he exercised it in a lawful manner as permitted by statute and according to the applicable jurisprudence.

[21] Before turning to the next issue, I add that although I agree with the Respondent that the Council does not have authority to review the merits of a judge's decision, I note that subsection 63(4) of the *Act* deems the Council or an Investigation Committee to be a superior court in connection with making an inquiry or investigation, with the attendant powers of summoning witnesses and enforcing attendance. In my view, the matter here did not reach this stage, however, because of early winnowing.

B. *Decision is Reasonable*

[22] I am not convinced that the Applicant has met his onus of showing the Decision was unreasonable. Reasonableness review is concerned with both the outcome of the decision and the reasoning process that led to that outcome: *Vavilov*, at para 87. The written reasons of an administrative are not to be judged against a standard of perfection: *Vavilov*, at para 91.

[23] Further, it is not the Court's role on judicial review to make a determination as to whether the complaint is well founded. Nor is it the Court's role to second-guess Justice Bock's determinations, including how he controlled the process: *Turner-Lienaux*, at para 12. Rather, the Court's only remaining role, at this stage of the review here, is to determine whether the Decision is unreasonable and hence, must be set aside.

[24] The Applicant argues that the Council did not look at the material and arguments submitted because there was no reference in the Decision to the matters raised. I disagree for at least two reasons.

[25] First, the decision maker is presumed to have considered and weighed the evidentiary record before them and is not required to mention every piece of evidence: *Babai v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1341 at para 26; *Basanti v. Canada (Citizenship and Immigration)*, 2019 FC 1068 at para 24.

[26] Second, the Decision itself states that “[a]though all your attachments have been reviewed by Council, I will summarize your issues as you did in your complaint” [emphasis added.] The Decision summarizes the Applicant’s allegations against Justice Bock essentially as follows:

1. his dismissive tone, talking down and interruptions;
2. lack of procedural fairness and adherence to the court’s rules;
3. preferential treatment given to the opposing lawyer and the lawyer for the Manitoba Law Society;
4. failure to give Patricia Bazan (the Applicant’s mother) the presumption of competence;
5. failure to hear Patricia Bazan and his less-than-human treatment of her;
6. lack of understanding that living near the poverty line impacts access to lawyers;
7. lack of understanding and disregard for the Council’s “*Statement of Principles on Self-represented Litigants and Accused Persons*”; and
8. ignoring legislation and refusing to hear the respondents.

[27] I find the summary of issues reflects the Executive Director’s review and understanding of the matter for the purpose of conducting the early screening. The Applicant has not provided any examples that, in my view, displace the above presumption in this case that the evidentiary record was considered and weighed.



[28] For example, the Applicant complains that Justice Bock interrupted the Applicant in a case management conference [CMC]. While Justice Bock stepped into the discussion, the transcript of the CMC does not demonstrate this was done in a way that raises an issue of judicial conduct such that the Council should have permitted the complaint to move forward. Instead, in my opinion, the evidence shows that Justice Bock, as the Council states in the Decision, was acting within his discretion in the conduct of a case (in the sense of maintaining control of the proceedings and procedures pertaining to the particular case).

[29] Further, this Court has held previously that the Council has the expertise to distinguish between matters that constitute judicial decision-making, including controlling applicable proceedings and procedures, for which recourse is available only before the courts, such as on appeal, and matters that threaten the integrity of the judiciary as a whole, such as situations where a judge has become incapacitated or disabled from performing their judicial functions: *Bernard*, at para 6.

[30] In this regard, the Federal Court of Appeal guides that issues of bias and procedural unfairness, including a judge's exercise of discretion to control matters in their courtroom, are matters that should be pursued through the appeal process and are not the proper subject of a judicial conduct complaint: *Cosentino v Canada (Attorney General)*, 2021 FCA 193 at paras 5-6. This is binding jurisprudence on this Court.

[31] In the end, I am not persuaded that the matters the Applicant raises about the proceedings before Justice Bock fall outside the ambit of what are appropriate considerations for an appeal court.

[32] I find the Decision bears the hallmarks of reasonableness and does not warrant being set aside. The Executive Director's reasoning permits the Court to understand the basis on which the complaint was dismissed or rejected at the early screening stage. For example, the Decision describes that "[i]t is not the role of Council to review the manner in which a judge exercised his or her judicial discretion in the conduct of the case, nor how he or she came to findings of fact and law[; ... t]his role more appropriately belongs to the court at the appellate level."

[33] As in *Singh*, the Executive Director dismissed the complaint because there was no evidence of a conduct issue (in the sense that the judge has become incapacitated or disabled from performing their judicial functions) and because the Applicant's allegations are matters that properly belong before the appeal court to consider: *Turner-Lienaux*, at para 58.

#### IV. Conclusion

[34] For the above reasons, this judicial review application is dismissed, with costs payable by the Applicant to the Respondent, Attorney General of Canada in the all-inclusive amount of \$1,500.

**JUDGMENT in T-1361-21**

**THIS COURT'S JUDGMENT is that:** the Applicant's application for judicial review is dismissed, with costs payable by the Applicant to the Respondent, Attorney General of Canada in the all-inclusive amount of \$1,500

"Janet M. Fuhrer"

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Judge

**Annex “A”: Relevant Provisions**

*Judges Act, R.S.C. 1985 c. J-1*  
*Loi sur les juges, L.R.C. (1985), ch. J-1*

<p><b>Constitution of the Council</b></p> <p><b>Objects of Council</b></p> <p><b>60 (1)</b> The objects of the Council are to promote efficiency and uniformity, and to improve the quality of judicial service, in superior courts.</p> <p><b>Powers of Council</b></p> <p><b>(2)</b> In furtherance of its objects, the Council may</p> <ul style="list-style-type: none"> <li><b>(a)</b> establish conferences of chief justices and associate chief justices;</li> <li><b>(b)</b> establish seminars for the continuing education of judges, including seminars on matters related to sexual assault law and social context, which includes systemic racism and systemic discrimination;</li> <li><b>(c)</b> make the inquiries and the investigation of complaints or allegations described in section 63; and</li> <li><b>(d)</b> make the inquiries described in section 69.</li> </ul>	<p><b>Constitution et fonctionnement du Conseil</b></p> <p><b>Mission du Conseil</b></p> <p><b>60 (1)</b> Le Conseil a pour mission d’améliorer le fonctionnement des juridictions supérieures, ainsi que la qualité de leurs services judiciaires, et de favoriser l’uniformité dans l’administration de la justice devant ces tribunaux.</p> <p><b>Pouvoirs</b></p> <p><b>(2)</b> Dans le cadre de sa mission, le Conseil a le pouvoir :</p> <ul style="list-style-type: none"> <li><b>a)</b> d’organiser des conférences des juges en chef et juges en chef adjoints;</li> <li><b>b)</b> d’organiser des colloques portant notamment sur des questions liées au droit relatif aux agressions sexuelles et au contexte social, lequel comprend le racisme et la discrimination systémiques, en vue de la formation continue des juges;</li> <li><b>c)</b> de procéder aux enquêtes visées à l’article 63;</li> <li><b>d)</b> de tenir les enquêtes visées à l’article 69.</li> </ul>
<p><b>Employment of counsel and assistants</b></p> <p><b>62</b> The Council may engage the services of such persons as it deems necessary for carrying out its objects and duties, and also the services of counsel to aid and assist the Council in the conduct of any inquiry or investigation described in section 63.</p>	<p><b>Nomination du personnel</b></p> <p><b>62</b> Le Conseil peut employer le personnel nécessaire à l’exécution de sa mission et engager des conseillers juridiques pour l’assister dans la tenue des enquêtes visées à l’article 63.</p>
<p><b>Inquiries concerning Judges Investigations</b></p>	<p><b>Enquêtes sur les juges</b> <b>Enquêtes facultatives</b></p>

<p><b>63(2)</b> The Council may investigate any complaint or allegation made in respect of a judge of a superior court.</p>	<p><b>63(2)</b> Le Conseil peut en outre enquêter sur toute plainte ou accusation relative à un juge d'une juridiction supérieure.</p>
<p><b>Powers of Council or Inquiry Committee</b></p>	<p><b>Pouvoirs d'enquête</b></p>
<p><b>63(4)</b> The Council or an Inquiry Committee in making an inquiry or investigation under this section shall be deemed to be a superior court and shall have</p>	<p><b>63(4)</b> Le Conseil ou le comité formé pour l'enquête est réputé constituer une juridiction supérieure; il a le pouvoir de :</p>
<p>(a) power to summon before it any person or witness and to require him or her to give evidence on oath, orally or in writing or on solemn affirmation if the person or witness is entitled to affirm in civil matters, and to produce such documents and evidence as it deems requisite to the full investigation of the matter into which it is inquiring; and</p>	<p>a) citer devant lui des témoins, les obliger à déposer verbalement ou par écrit sous la foi du serment — ou de l'affirmation solennelle dans les cas où elle est autorisée en matière civile — et à produire les documents et éléments de preuve qu'il estime nécessaires à une enquête approfondie;</p>
<p>(b) the same power to enforce the attendance of any person or witness and to compel the person or witness to give evidence as is vested in any superior court of the province in which the inquiry or investigation is being conducted.</p>	<p>b) contraindre les témoins à comparaître et à déposer, étant investi à cet égard des pouvoirs d'une juridiction supérieure de la province où l'enquête se déroule.</p>
<p><b>Report and Recommendations Recommendation to Minister</b></p> <p><b>65(2)</b> Where, in the opinion of the Council, the judge in respect of whom an inquiry or investigation has been made has become incapacitated or disabled from the due execution of the office of judge by reason of</p> <p>(a) age or infirmity, (b) having been guilty of misconduct,</p> <p>(c) having failed in the due execution of that office, or (d) having been placed, by his or her conduct or otherwise, in a position incompatible with the due execution of that office,</p>	<p><b>Rapports et recommandations Recommandation au ministre</b></p> <p><b>65(2)</b> Le Conseil peut, dans son rapport, recommander la révocation s'il est d'avis que le juge en cause est inapte à remplir utilement ses fonctions pour l'un ou l'autre des motifs suivants :</p> <p>a) âge ou invalidité; b) manquement à l'honneur et à la dignité; c) manquement aux devoirs de sa charge; d) situation d'incompatibilité, qu'elle soit imputable au juge ou à toute autre cause.</p>

the Council, in its report to the Minister under subsection (1), may recommend that the judge be removed from office.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1361-21

**STYLE OF CAUSE:** WILLIAM PATRICK BAZAN v ATTORNEY  
GENERAL OF CANADA AND THE HONOURABLE  
MR. JUSTICE THEODOR E. BOCK

**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

**DATE OF HEARING:** MAY 16, 2022

**JUDGMENT AND REASONS:** FUHRER J.

**DATED:** JUNE 21, 2022

**APPEARANCES:**

William Patrick Bazan	FOR THE APPLICANT (ON HIS OWN BEHALF)
Beth Tait Alicia Dueck-Read	FOR THE RESPONDENT (ATTORNEY GENERAL OF CANADA)
G. Todd Campbell	FOR THE RESPONDENT (THE HONOURABLE MR. JUSTICE THEODOR E. BOCK)

**SOLICITORS OF RECORD:**

Attorney General of Canada Winnipeg, Manitoba	FOR THE RESPONDENT (ATTORNEY GENERAL OF CANADA)
G. Todd Campbell MLT Aikins LLP Winnipeg, Manitoba	FOR THE RESPONDENT (THE HONOURABLE MR. JUSTICE THEODOR E. BOCK)